

No. 13-0231 RS

¹ The Missouri Secretary of State issued a certificate stating that “Treecourt Unleashed Dog Adventure Park, LC” was organized as a limited liability company in Missouri. Pet. Ex. A. “LC” is an accepted designation of a limited liability company. § 347.020(1), RSMo 2000.

On July 11, 2013, the Director issued a corrected final decision, making it clear that his assessment in case no. 13-0231 RS was against Hubb personally. We consolidated the two cases.

Although Hubb's complaint was filed before the Director issued his corrected final decision, we find it was timely. *See Kleim v. Sansone*, 248 S.W.3d 599, 602 (Mo. 2008) ("Since, by definition, statutes of limitation do not restrict how early a party may file, the fact that Kleim filed the petition before the period specified in [the statute] does not render her claim invalid").

We held a hearing on July 11, 2003. Hubb appeared *pro se*. Benjamin Slawson represented the Director. This case became ready for decision on November 26, 2013, the date the last written argument was filed.

Findings of Fact

Hubb, Treecourt, and the Admission Fees

1. Wayne Hubb is the owner of Treecourt.²
2. As stated in its Articles of Organization and Operating Agreement, Treecourt's purpose is to "feed, maintain, train, breed, board, manage, show, sell & lease livestock, including, but not limiting, domesticated animals & to create & maintain a park for their exercise and socialization."³
3. Treecourt is located at 2499 Marshall Road in unincorporated St. Louis County.
4. At all times relevant to this action, Treecourt maintained a dog exercise area in which dogs could run off leash and did not engage in any of the other activities specified in its Articles of Organization and Operating Agreement.
5. The dog exercise area at Treecourt consists of a 4-acre, fenced-in property.

² We refer to Treecourt and Hubb interchangeably in this decision as Hubb is the sole owner of Treecourt.

³ Pet. Ex. A; Pet. Ex. B at 1, 2.

6. Before allowing access to Treecourt, Hubb requires that dogs be spayed or neutered, vaccinated, and parasite-free. Hubb also requires that dogs undergo a temperament screening process.

7. Hubb requires that dog owners stay with their dogs while the dogs are at Treecourt. Hubb restricts owners to three dogs at Treecourt at one time and bans puppies and children under twelve.

8. Treecourt provides water stations, bags for picking up after the dogs, a patio, benches and tables for people to sit at, and a walking trail. In warmer months, Hubb sets up plastic children's swimming pools so that dogs do not overheat.

9. Hubb does not operate a concession stand at Treecourt.

10. Hubb charges a membership fee for people and dogs to use Treecourt. The fee schedule is:

	1 Dog	2 Dogs	3 Dogs
1 Month	\$33	\$43	\$48
Quarterly	\$79	\$90	\$100
Annually	\$300	\$350	\$400

11. Payment of the membership fee allows a person unlimited access to Treecourt during daylight hours seven days a week. Hubb closes Treecourt when the ground is too wet.

12. Treecourt had between 200 and 300 human members at the time of the hearing.

13. On the Internet site for Treecourt, Hubb wrote a mission statement: "To provide a friendly dog run where people can network with others who want their dogs to socialize and exercise off-leash."⁴

14. Treecourt members enjoy being outside with their dogs, playing with their dogs, and making friends with other dog owners.

⁴ Resp. Ex. 3 at 5-6.

15. Treecourt utilizes an Internet site to allow members to network with other dog owners.

16. Hubb relies on his website and word of mouth for advertising.

The audit and proceedings before the Director

17. The Director audited Treecourt for the time period between January 2007 and December 2011. Treecourt did not begin commercial operations until the fourth quarter of 2009.

18. As a result of the audit, the Director assessed sales tax against Treecourt for memberships sold during that period. The assessed tax was \$7,084.12, interest as of the audit completion date was \$260.95, and additions to tax were \$354.23, for a total amount due of \$7,699.30.

19. Treecourt had not registered with the Director as a vendor when the audit commenced. As part of the audit process, Hubb filed a registration application and is currently paying sales tax on membership fees to Treecourt.

20. On December 4, 2012, Hubb, on behalf of Treecourt, submitted a protest payment in the amount of \$6,881.72⁵ as well as a protest affidavit to the Director.

21. On December 14, 2012, the Director issued a final decision denying Treecourt's protest.

22. On February 14, 2013, Hubb filed his complaint with this Commission challenging the Director's final decision.

23. On July 11, 2013, the Director issued an amended final decision against Hubb, assessing \$7,699.30 in sales tax, additions to tax, and statutory interest.

Conclusions of Law

We have jurisdiction over appeals of the Director's final decisions. §§ 144.261 and 621.050.1.⁶ Our duty in a tax case is not merely to review the Director's decision, but to find

⁵ The record contains no information as to why Hubb paid only \$6,881.72 as a protest payment. All of the notices that the Director provided Hubb stated the correct amount of sales tax, interest, and additions to tax: \$7,699.30. Pet. Ex. 1 at B6, C1-C9 (individual quarterly returns total \$7,699.30).

⁶ Statutory citations are to RSMo 2000 unless otherwise indicated.

facts and determine the taxpayer's lawful tax liability for the period or transaction at issue by applying existing law to those facts. *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. 1990). Hubb has the burden to prove he is not liable for the Director's assessments. § 621.050.2.

Treecourt is a "Place of Recreation"

Section 144.020.1(2)⁷ imposes a sales tax as follows:

A tax is hereby levied and imposed ... upon all sellers for the privilege of engaging in the business of selling tangible personal property or rendering taxable service at retail in this state. The rate of tax shall be as follows:

(2) A tax equivalent to four percent of the amount paid for ... fees paid to, or in any place of amusement, entertainment or recreation... [.]

"To find a transaction taxable under this provision "two elements are essential,—that there be fees or charges and that they be paid in or to a place of amusement [entertainment or recreation]." *Michael Jaudes Fitness Edge, Inc. v. Director of Revenue*, 248 S.W.3d 606, 609 (Mo. 2008), *quoting L & R Distrib., Inc. v. Missouri Dep't of Revenue*, 529 S.W.2d 375, 378 (Mo. 1975).

The parties do not dispute, and the evidence shows, that Hubb collected membership fees for the privilege of using Treecourt. The only question in this case is whether Treecourt is a "place of amusement, entertainment, or recreation."

Section 144.020.1(2) does not define place, amusement, entertainment, or recreation. "If statutory language is not defined expressly, it is given its plain and ordinary meaning, as typically found in the dictionary." *Morse v. Director of Revenue*, 353 S.W.3d 643, 645 (Mo. banc 2011). The Missouri Supreme Court has set out definitions for the terms "place," "amusement,"

⁷ RSMo Cum.Supp. 2013. Although § 144.020 has been amended numerous times since 2000, the language of § 144.020.1(2) has not changed since at least 2000.

“entertainment,” and “recreation” in previous decisions interpreting § 144.020.1(2). We will use those definitions.

“Place” is “a building or locality used for a special purpose <place of amusement>.” *Moon Shadow, Inc. v. Director of Revenue*, 945 S.W.2d 436, 437 (Mo. banc 1997), *quoting* WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1727 (1976). “Special” is “designed or selected for a particular purpose, occasion, or other end.” WEBSTER’S THIRD NEW INT’L DICTIONARY UNABRIDGED 2186 (1986). The four-acre, fenced-in property at Treecourt is used exclusively for an off-leash dog park. We conclude that Treecourt is a location used for a special purpose. Treecourt is a “place” under § 144.020.1(2).

The Missouri Supreme Court defined the three remaining terms as follows:

“Amusement” is defined as a “pleasurable diversion: entertainment.” Webster’s Third New International Dictionary 74 (1966). “Entertainment” means “something that diverts, amuses, or occupies the attention agreeably.” *Id.* at 757. “Recreation” is “a means of getting diversion or entertainment.” *Id.* at 1899.

Spudich v. Director of Revenue, 745 S.W.2d 677, 680 (Mo. 1988).

The evidence in this case shows that the people coming to Treecourt walk with their dogs, play with their dogs, and socialize with other dog owners. We have no difficulty in finding that those activities are recreational and provide a diversion from day-to-day activities. Further, the pictures submitted in Respondent’s Exhibit 4 show people having fun and enjoying being at Treecourt with their dogs. We therefore find that Treecourt is a place of amusement as well.

One of the major purposes behind Treecourt was to provide proper exercise for dogs. In its operating agreement and articles of organization, Treecourt’s stated purpose is to “maintain a park for [dogs’] exercise and socialization.” Hubb testified that he opened the dog park before other activities because “the dog park was ... the easiest thing to do as far as getting an exercise

run prepared for the dogs.”⁸ Hubb also described “proper exercise” as being essential for dogs.⁹ Finally, on the Internet site for Treecourt, Hubb wrote a mission statement: “To provide a friendly dog run where people can network with others who want their dogs to socialize and exercise off-leash.”

The Missouri Supreme Court has explicitly held that “[a]thletic and exercise or fitness clubs are places of recreation for the purposes of section 144.020.1(2).” *Wilson’s Total Fitness Center, Inc. v. Director of Revenue*, 38 S.W.3d 424, 426 (Mo. 2001); *Michael Jaudes Fitness Edge, Inc.*, 248 S.W.3d at 609 (Mo. 2008). Other than the fact that Treecourt’s primary clientele is canine, we see no difference between Treecourt and a fitness club. Both exist to provide a proper facility for exercise. Thus, we find that Treecourt is a “place of recreation” under § 144.020.1(2).

Hubb argues that Treecourt exists to provide health benefits for dogs, not recreation or amusement. The Missouri Supreme Court has held that “a location in which amusement or recreational activities ‘comprise more than a *de minimus* portion of the business activities’ occurring at that location is considered a place of amusement or recreation under” § 144.020.1(2). *Michael Jaudes Fitness Edge, Inc.*, 248 S.W.3d at 609, *quoting Spudich*, 745 S.W.2d at 682. We do not dispute that off-leash exercise has health benefits for dogs. However, the recreational and amusement components of Treecourt are at least as prevalent as the health benefits. In fact, the two are inseparable.

We conclude that Treecourt is a place of amusement and recreation, and that the member fees it collects are subject to sales tax.

⁸ Tr. 45.

⁹ Tr. 56.

Treecourt's Tax Liability

The record shows that Hubb paid \$6,881.72 under protest and the Director applied that amount to the sales tax, additions to tax, and statutory interest for the audit period. We have reviewed the audit package and find no error in the Director's calculations.

Thus, Hubb owes the amount assessed by the Director in his final decision, \$7,699.30, minus the amount of his protest payment, \$6,881.72, plus any additional interest that may have accrued at the statutory rate.

Summary

Hubb is liable for sales tax, additions to tax, and statutory interest on the sale of memberships to Treecourt. Hubb is entitled to a credit of \$6,881.72 for the amount that he paid under protest.

SO ORDERED on February 26, 2014.

/s/ Karen A. Winn
KAREN A. WINN
Commissioner